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FRANK LOSES FIGHT FOR
NEW TRIAL

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**JUDGE HILL
DENIES**

**MOTION AS
DEFENSE**

**CLOSES
ARGUMENTS**

Court Announced Mind
Is Al-

Ready Made Up and
Renders

Decision Without
Hearing

From Solicitor Dorsey

CASE WILL BE TAKEN
UP TO SUPREME
COURT

Judge Hill Says He Will
Sign

Bill of Exceptions, but Will Send Written Opinions With It—Resentencing Will Be Delayed

The extraordinary motion of Leo M. Frank for a new trial was denied by Judge Benjamin H. Hill Wednesday afternoon at the conclusion of arguments by Attorneys Luther Z. Rosser and Reuben R. Arnold, for the defense. Judge Hill made his decision without hearing from Solicitor Hugh M. Dorsey.

Judge Hill announced he would certify to a bill of exceptions, allowing the defense to carry the case to the supreme court of Georgia. This will delay the resentencing of Frank for several months.

While announcing that he would certify to a bill of exceptions, Judge Hill stated that in the event the motion was carried to the supreme court for review he would send along with the bill a written opinion by himself.

The motion of Tye, Peeples *et al.* to set aside the verdict on the ground that Frank was not in the court room when the verdict was rendered, was set for 10 o'clock Saturday morning by Judge Hill. Solicitor Dorsey said he did not know whether he would be able to get ready by that or not.

Judge Hill's decision on the extraordinary motion was forecast at the conclusion of Mr. Rosser's argument, when he told Attorney Rosser to take all the time he wished for his argument, as it was not his then intention to hear from the solicitor. Prior to this announcement, it was expected that the court would take the case under advisement after the arguments were in.

WITNESSES DISCUSSED.

Mr. Rosser's argument dwelt largely upon the character of the witnesses on which Frank's conviction was secured. He declared that there was so much to excite passion and prejudice in the case that it was not surprising the court was confronted with much conflicting testimony. He dwelt at length on the power of the state and the solicitor, declaring that it was not necessary for the solicitor to abuse his power in order to use it tremendously in influencing the evidence of witnesses.

In his argument, Mr. Arnold contended he does not believe there is any perversion in the case, on Frank's part or on Conley's talk. The whole talk of perversion, he said, is rot. He repudiated the theory advanced by W. J. Burns, detective employed by the defense, who said the way the garments of the dead girl were cut indicated a pervert, by declaring that in his own (Arnold's) opinion, that indicated nothing.

Before they began the arguments, Solicitor Dorsey announced he understood Anna Maud Carter was in Chattanooga. The court had given days from May 4 for her return to Atlanta, if her affidavits are to be considered. The solicitor submitted that if it was true, she was in Chattanooga, not so much time would be needed. Both Mr. Rosser and Mr. Arnold stated they didn't know whether she was in Chattanooga or not. They had heard that she

was; and that if the court would set an hour for her to appear, they would get her here if it was possible.

CHARACTER AFFIDAVITS.

The defense commenced the day's hearing by reading a number of affidavits by well known citizens sustaining the characters of D. I. MacIntyre and J. O. Knight, two notaries before whom a number of the defense's affidavits had been made.

Attorney Leonard Haas, who was reading for the defense, took up an affidavit by Herbert G. Schiff, attacking the state's showing on the Becker note proposition. Schiff asserted that when Becker left the employ of the factory he (Schiff) personally emptied the contents of Becker's desk on the floor of Becker's office. He took a number of blue prints and other papers to be preserved, and filed them; and gave directions that the remainder of the desk's contents be carted as trash to the base-

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LEO M. FRANK LOSES OUT IN BATTLE FOR
NEW TRIAL

JUDGE HILL DENIES MOTION AS DEFENSE

CLOSES

ARGUMENTS

(Continued from page 1.)

ment. Schiff also stated that the number of the order blanks appearing in the yellow murder note is 1018; and he attached to his affidavit the original invoices of the Cotton States Belting Supply company, on requisitions from the factory Nos. 1018 and 1019, signed September 16, 1909.

Next came an affidavit by George T. Wrenn in which he denied the charges made against him in the affidavits of the Negroes, Fred Perkerson and Frank Reese.

Wrenn denied positively that he ever offered these Negroes any reward to get a confession from Conley, or that he even talked to them about getting a confession from Conley. He himself did not attempt to get any confession, and he did not tell Anna Carter to try to get one. He did not know Anna Carter was trying to get a confession from the negro until after he read her affidavit presented at this hearing.

Affidavits were read from Herbert Schiff, Fritz Dezanka and Joseph Stelka, corroborating Schiff's main affidavit on the point that the contents of Beck's desk were emptied on the floor and ordered carted to the basement.

The affidavit of Harry Alexander, an attorney, stated that the print of the yellow murder note, which appears in his pamphlet is absolutely the same and identical with the print of the murder note appearing in the brief of evidence certified to by Judge Roan.

An affidavit from C. W. Burke was read in which he detailed his version of the Epps Birmingham episode. Burke swore that some time in September of last year Wrenn reported to him that

Epps, who was with the Miller Messenger service, had met him casually and in a conversation had admitted that part of his testimony at the trial was false; that Epps also told him he was afraid of John Black and other detectives and wouldn't make an affidavit here, although he was sorry, he swore as he did at the trial. Burke swore he then instructed Wrenn to tell Epps he was Terry, a prize fighter, and was getting ready to go to New Orleans for a bout. Wrenn reported that Epps had told him he had stolen \$10 from the messenger service and that he was not being treated properly at home and was getting ready, anyway, to make a hobo trip.

RODE IN DIFFERENT COACHES.

Burke swore that he and Austin G. Dennison (a New York detective who was working on the case) took the same train to Birmingham with Wren and Epps, but did not talk to them en route as they were in the day coach and he and Dennison were in the Pullman. After they got off the train, he (Burke) approached the other two and did talk with Epps about the money he had stolen from the messenger service but was very careful not to say or intimate at any time that he was an officer. After they went to the hotel, he told Epps he would phone to Atlanta about the money, but instead phoned Dennison by previous arrangement, and then told Epps that his (Burke's) chief was coming up to talk to him.

Dennison approached Epps as one simply interested in the Frank case and asked Epps to tell him his story about it; and Epps repeated the testimony given by him at the trial. Then Dennison said: "I don't see anything wrong with that if it is the truth." Epps said: "Some of it was the truth, and some of it wasn't."

Dennison told him to tell the whole truth and nothing but the truth. Burke and Wrenn then left Dennison alone with Epps, and when they returned Dennison had written out a three-page statement. In their presence Dennison read it to Epps, telling him to make any corrections; and that Epps did make several corrections.

MADE NO CORRECTIONS.

A stenographer was called in and the statement was dictated to him, Epps being told again to make any correction; but this time he had none to make. They then took the boy before a notary and he swore to the affidavit. He was made absolutely no promise of reward, nor was he coerced in any way, Burke swears.

The affidavit of J. W. Wrenn was read next, corroborating Burke in detail. Wrenn added that when he first met Epps, the boy was ragged and filthy and he gave him some castoff clothing of his own to wear and also a dollar to get some food. On the train there was a blind man, he said; but the man was not Burke, but was some one Wrenn had never seen before.

B. Bernard swore to the next affidavit. It was that Bernard never met Burke until yesterday, the day he made the affidavit; that he saw Epps for the first time last, Saturday, and had not been in Birmingham in eight years, and that he had seen the solicitor and urged him to make an investigation of Epps' story.

The next affidavit was that of Lemmie Quinn, who stated he had introduced Marie Karst to C. W. Burke; that he heard her tell her story and make her affidavit to Burke; that Burke offered her no reward or hope thereof, nor did he intimidate her nor conduct himself in any way improperly.

HOPKINS' AFFIDAVIT.

Mr. Haas read an affidavit by Stiles Hopkins, who swore that though he is associated with the law firm of Rosser, Brandon, Slaton & Phillis, he is not a partner in that firm and had never been connected with Frank's case as counsel; that he did take the trip to Chicago for the purpose of taking an affidavit by the negro, Aaron Allen; that after he arrived in Chicago, he talked with C. A. Isom, Detective Burns, Jake Jacobs and others who had interviewed Allen, and from the information given him by them he concluded Allen's affidavit would be of no benefit to Frank's case; that it did not bear relevantly on the extraordinary motion for a new trial; and that therefore he declined to see Allen or to take an

affidavit; that he was not a detective; that after the various detectives had failed to obtain any relevant evidence from Allen, he considered it unnecessary to take his affidavit.

The only affidavit taken in his presence while he was in Chicago was one by a negro named Calhoun, the contents of which were of doubtful relevancy to the extraordinary motion for a new trial and for that reason was not read. He had never heard Detective Burns abuse Allen or Calhoun. He swore no affidavit about the case had been made in his presence by a Salvation Army man.

ROSSER ADDRESSES COURT.

At this point Attorney Rosser said: "I wisht o call the attention of the court to the questions and answers of Dr. Harris during the Frank trial; also the questions and answers of Miss Nellie Wood; also part of the questions and answers of Newt Lee."

Judge Hill said he had read the brief of evidence, and that this brief would be available while he was considering the extraordinary motion.

An affidavit was read by Henry A. Alexander, supplementing his affidavit read by Mr. Haas. In that Mr. Alexander swore he attested and submitted an attached photographic copy of the murder note.

Attorney Rosser said he wished to read an affidavit himself; that he was reading it because it was his own affidavit. The contents of the affidavit were that Mr. Rosser had never known of the existence of C. B. Ragsdale and R. L. Barber until they came to his office to give an affidavit; that he was out at the time and Mr. Morris Brandon, a partner in the firm, began taking the affidavit; that when he came into the office where Ragsdale and Barber were making the affidavit, he didn't know what they were testifying to, and only learned it after they had told him; that he had heard rumors that some one professed to have overheard Conley make a confession, but he did not know the identity of the

individual; that immediately after he obtained the affidavit from Ragsdale and Barber he made an inquiry into their character.

AFFIDAVIT NOT NECESSARY.

Judge Hill said: "Mr.' Rosser, it is not necessary for you to present that affidavit."

"I did so merely because in his affidavit Ragsdale made it appear that as soon as I arrived in my office, I immediately began to take the affidavit," replied Mr. Rosser, "indicating that I had previous knowledge of it."

The judge said it wouldn't be necessary to put Mr. Rosser's affidavit into the record.

Solicitor Dorsey announced that the state would have two or three other affidavits, which he had not had time to prepare, but that he would outline what these witnesses would swear; that this could be written into the record, and later he would file the affidavits. This was acceptable to Messrs. Rosser and Arnold, and Mr. Dorsey said:

"I will submit an affidavit by J. W. Coleman, stepfather of Mary Phagan, who will swear that he and not Detective Black brought George Epps before the coroner's jury to testify at the inquest, and an affidavit by Detective Black to the effect that he had never met George Epps at the jail or at the solicitor's office."

Both sides announced that all their evidence was in, and Judge Hill fixed two hours as the time allowed each side for argument. Mr. Rosser opened for the defense.

ROSSER NOT FEELING WELL.

After furnishing a deputy sheriff with a long list of law books that he desired from the state library, Mr. Rosser stated to the court that he was not at all well; that he had a bad sore throat, and with the court's permission he would make his argument while seated.

Before Mr. Rosser began his argument the solicitor informed the court that he had been advised that Anna Maud Carter was in Chattanooga, Tenn.; that on May 4, when it was understood she was in New Orleans, the court had given the defense five days in which to produce her; and that inasmuch as she was close at hand now, that much time would not be necessary. Messrs. Rosser and Arnold declare they did not know the whereabouts of Anna Maud Carter but that they had been informed she was in Chattanooga. They asked the court to fix an hour for her appearance in Atlanta. Judge Hill fixed the hour of 10 o'clock Thursday morning for her to appear; and announced that in the event it developed the woman was not in Chattanooga, he would consider that fact.

Mr. Rosser began his argument.

"Your honor, a great deal—a vast amount—of testimony which has been introduced in this case really has no part or parcel in it."

AFFIDAVITS TO BE FILED.

The solicitor interrupted to request the court to take an order requiring all affidavits submitted by both sides during the hearing to be filed in the clerk's office within three days from date. The solicitor said:

"We will wish to refer to them from time to time."

Both Mr. Rosser and Mr. Arnold agreed that such action was customary and that the order should be issued. Judge Hill issued the order.

Mr. Rosser resumed his argument.

"Much of the testimony that has been submitted during this hearing has been let in by your honor on the ground that it showed the manner of getting the testimony—not because it was relevant or had any direct bearing on the case. You will notice as you consider the evidence that several of the witnesses swore Burke took their affidavits. You will notice also that in some of

these cases Burke did not take the affidavit and had no connection with them. This, however, is not to be wondered at. In a case where there is so much to excite the passions and prejudices of individuals, you may expect conflicting evidence due to the excitement of mind in such cases, witnesses frequently change their evidence, honestly or dishonestly.

PRESSURE IS STRONG.

“Anybody who in the least understands human nature knows full well the power of the state and the power of the city—knows that this power is sufficient to cause a witness who has changed his testimony to change it back.”

“An individual hasn’t the power or capacity of the state or city. I want to say right here it is not necessary for the solicitor or the other state and city officials to use their power wrongfully to exercise a tremendous and compelling influence over these witnesses. The solicitor’s access to the grand jury is sufficient. Not a single man who testified falsely in the Frank trial on material matters ever had an opportunity to rectify his testimony if he wished to do so.”

“The solicitor doesn’t have to put in the public prints that he will prosecute for perjury those who change their original testimony. All he has to do is to sit still. His very power rests in the stillness of his office, which is sufficiently potent.”

Mr. Roser read a code section dealing with extraordinary motions, in which the law was laid down that ordinarily cumulative and impeaching evidence is not a ground for a new trial.

JUDGE HILL AGREES.

“That was never meant that it was not in the discretion of a Georgia judge to grant a new trial if the new evidence was wholly cumulative and wholly impeaching, but it was meant that the judge should exercise prudence and care,” he said.

Mr. Rosser started to read a number of cases to uphold his contention, when the court said:

“I agree with you on that point, Mr. Rosser.”

Continuing his argument, Mr. Rosser said that the judge must photograph in his own mind the entire trial, not, of course, with the view to passing on that trial, but to get exact relations with this motion. Mr. Rosser said he would not read any part of the record of the trial or any part of the first motion for a new trial, because he knew the court was familiar with it.

“I am not going into the Duffy matter, the McKnight and the Mae Barrett propositions, except incidentally. Here I will say that I have no criticism of the detectives or of Brother Dorsey. Twelve months have passed since that court battle, and I am older now. But cull them out—these witnesses; see what kind of people they have convicted us with.”

“Take Dalton. Take Epps. They will testify to anything. When the detectives were working out this evidence, they thought Burke had taken all of the affidavits. I think he took only two of them. Jones says that his affidavit is a forgery. I only ask that your honor compare the signature on the state’s affidavit with that on ours.”

“Take Ruth Robinson. Compare our affidavit with their affidavit.”

“I will rest this case—I will risk my life, even my hereafter—that you will say the signatures are the same.”

Mr. Rosser continued to talk of the character of the state’s witnesses.

“I only ask your honor, compare, for instance, the testimony that Miss Nellie Wood gave at the coroner’s inquest, with the testimony that Miss Nellie Wood gave at the coroner’s inquest, with the testimony she gives in the affidavit made to the state. After your honor has made that comparison, then you wouldn’t convict a mosquito on her testimony!”

DENOUNCE WITNESSES.

"Take her affidavit, and take that of Marie Karst, the other girl witness. I am sure that Mr. Dorsey did not write those affidavits, for he would not have made in them those stump speeches that were placed there for no purpose but to exasperate and inflame. Frank was convicted on the testimony of Dalton, Epps, Conley and people of that stamp. The jury knew nothing about these people. Your honor knows much."

"Now let us come back and leave all that for the time being. Let's look at a fair interpretation of Dr. Harris' testimony. Let's consider the prior evidence to Dr. Harris' testimony, and see its significance. There were two things that the state contended in support of its theory that the murder was committed on the second floor of the factory. These two things were apart from the testimony of Conley. What were they? It was contended that some blood was found by the dressing room door. It was contended that some hair had been found on a lathe handle. It was contended that this was Mary Phagan's blood and that this was Mary Phagan's hair; and that therefore the murder was committed on the second floor."

"Your honor will see readily the significance of the testimony bearing on these two points. We had no opportunity to examine the hair. The solicitor said it was lost. I have no doubt my brother was correct in his statement."

The solicitor interrupted.

"Mr. Rosser is mistaken," said he, "I had the hair through the trial, until after the trial, and I may have it now. Please refer to the record on this point."

HAIR FOUND ON LATHE.

Mr. Rosser resumed.

"I do not wish to reflect upon the solicitor in this matter. I think my Brother Dorsey is mistaken. The testimony was to the effect that there were only six or eight strands of this hair. Harris

says he used six or eight strands, and I understood at the time that the hair had been lost.”

The solicitor replied.

“Your honor, I can obtain an affidavit from Mr. Dan Goodlin to the effect that he had this hair in his possession after the trial, and he may have it now.”

Mr. Rosser resumed.

“Your honor, the only opportunity we had to get at the facts in connection with this hair incident was to cross examine the little girl who said it looked like Mary Phagan’s hair, and to cross-examine Barrett, who said about the same thing. I want to call your honor’s attention to the fact as shown by the record, that the solicitor pressed this hair matter on the jury four different times. Now what was the truth?”

“Dr. Harris had examined the hair found on the lathe, under a microscope; and had compared it with the hair taken from Mary Phagan’s head. He had a better opportunity than anybody on earth to know whether that was the little girl’s hair.”

“When Harris was on the stand, he knew that he had compared the hair. He

is a man who claims to be skilled in science. In making the autopsy on Mary Phagan’s body, he claimed to have used the best microscope in the world. He should have known more than a thousand little girls who said it looked like Mary Phagan’s hair. I don’t want to criticize Dr. Harris too severely, but I submit, your honor, that in the evidence given by him at the trial, and in his subsequent affidavit there never was such evasion. He could have given Dickens’ ‘Artful Dodger’ cards and spades and beat him blind. There never was such a sealed-up witness. And with the facts before you, I want to ask could it be honest dealing?”

“Oscar Pappenheimer, a very good friend of Dr. Harris, inquired of him about the results of his examination and autopsy of the dead girl. The doctor evaded. He answered Mr.

Pappenheimer by saying: 'There isn't anything of importance in my finding.' Learning that Dr. Harris performed an autopsy, Mr. Arnold and I went to him as taxpayers, who have helped pay his salary, and as citizens, feeling that there could be no honest purpose for dodging."

ASKED WHAT HE FOUND.

"We asked him: 'Dr. Harris, what have you found by that autopsy? What part of the body did you examine? And for what purpose did you make your examination when he went on the stand of justice—and if he be a scientist, to the shame of science!—he answered that he had promised to keep it secret; that we would learn the result of his examination when he went on the stand."

"On the stand he was constantly evading, as subsequent events have proved, Mr. Arnold cross-examined Dr. Harris and asked him specifically what parts of the body he had examined, and for what purpose. He said he had examined the stomach organs. He never said a word about hair."

"Let's take up his present evidence. He told Harllee Branch, this Atlanta Journal newspaper reporter sitting there, that he had examined the hair and compared it under the microscope, and that it differed in texture, color and shape."

"He reported to Solicitor Dorsey that the hair found on the lathe was not Mary Phagan's hair. He told the solicitor that in the presence of Bill Smith. What does he say now? 'I told Mr. Dorsey I didn't think it was the same hair.' Evasion again! After all this publicity he in effect now says he is not in condition to say whether it was or was not Mary Phagan's hair. What does this dodging testimony by Dr. Harris mean, your honor? It means that when an honest jury has had an opportunity to consider his latest evidence it will find that he says he examined the hair and told the solicitor it was not Mary Phagan's hair."

"LET JURY DECIDE."

“Then, your honor, let this go to a jury. Let this point be made before a jury. No judge who ever loved the right can approve the conduct of those in that hair incident. My brother Dorsey was mistaken in his zeal. My brother Dorsey should have represented the whole state and caused Dr. Harris to tell all he knew, the whole truth. Those were dark days! The bright sunlight was dimmed by passion and prejudice, and stronger men than my brother Dorsey and I lost their heads.”

Referring to the alleged blood stains on the second floor of the factory, Mr. Rosser said.

“Your honor, the record shows little Mary Phagan had a wound on the head, where there are many blood vessels that would most likely bleed and profusely. I want to call your attention to the fact that there was not a drop of blood where Conley swore the body was lying when he picked it up. According to the evidence, she was carried with her head exposed, from this spot to the elevator. There was no coagulation of the blood.”

“The body was still warm, and yet there was not a drop of blood at the spot where the body was found, between that spot and the dressing room door—where the state claims there were blood spots, and between the dressing room door and the elevator. There was not a drop of blood in the elevator, although the evidence was that the body lay on the elevator floor.”

THOUGHTS NOT SUFFICIENT.

“State those things, and no man will contend that those spots at the dressing room door were blood. It physically couldn’t happen. I ask your honor to think of that and deal with it with your heart and conscience. Some thought it was blood. But that is not the test. The test must be one where no doubt remains. It must be a scientific test. These spots by the dressing room door were chipped up. There were five or six chips, I think. They were taken to a chemist—a chemist who, by the way, is no friend of ours. On four of these chips there was not a trace of blood. And yet these chips were covered with the same smear which had been thought

to be blood. On one of these chips the chemist discovered four or five corpuscles to the field. Just before leaving the stand, the chemist swore it might have been the blood of a fly. Take the testimony, your honor, and weigh it!"

"If the jury thought wrong, your honor, and if that is the testimony relative to the blood and the hair, won't you, your honor, allow a jury to pass on this evidence?"

At this point, Attorney Arnold called Mr. Rosser's attention to the fact that he had spoken an hour and ten minutes of the two hours allowed. Mr. Rosser stated to the court that it had been his intention to discuss the Conley letters, but that Mr. Arnold would have to do that in his argument.

"That's all right," said the court. "Take whatever time you want. As the court is at present advised he does not wish to hear from the solicitor."

"This was interpreted to mean that the judge did not feel that there was necessity for the state to argue the evidence submitted by it in combatting the extraordinary motion for a new trial. This interpretation was strengthened a moment or two later when Mr. Arnold began the closing argument for the defense."

Under the custom and rule, the defense would have had the opening and closing speeches, the solicitor speaking between them.

ARNOLD BEGINS SPEECH.

Attorney Arnold began speaking.

"I don't suppose there was ever a more unfortunate occurrence for this community than this crime. It was a horrible crime and the perpetrator deserved full punishment. There has been no attempt to palliate or to mitigate the crime. The point has been: Who committed the crime? And has his conviction been according to law? The question we are considering now is: Has enough been shown to turn the scales even ever so slightly if all had been known at the trial?"

“The state has fallen in with a number of men all of whom are criminals. It relied on the testimony of these men to convict. They are Conley, Dalton, McKnight, Epps and Duffy. At the time of the trial Conley and Dalton were shown to be criminals.”

“Since the trial, McKnight, Epps and Duffy have been shown to have criminal records, and among their crimes is rank, bald perjury. Would it not have produced another result if this light had been thrown on these men at the trial? Nearly all of the state’s evidence revolves around them.”

“The perjury that has been committed in this case is sickening. It almost disgusts one with the human race. The essential point now is not which of their stories is true, but the fact that they have all shown they are not worthy of belief.”

JUDGE HILL INTERRUPTS.

Judge Hill interrupted. “Regarding the credibility of witnesses, Mr. Arnold, is it not the rule of law that you should indict, prosecute and convict witnesses for perjury before asking a new trial?”

Mr. Arnold: “Mr. Dorsey is on record as saying he would quit his office, before he would indict and prosecute Conely. So, you see, we are helpless.”

Judge Hill: “Wait. Suppose you had come to me and asked for a special solicitor, saying Mr. Dorsey is disqualified by his speech.”

Mr. Arnold: “Yes, but think what a handicap in the trial of the case his statement would be.”

Mr. Arnold stated he had not read the law quoted by the court. Judge Hill remarked that he remarked the case of the state vs. Malone, 149 Ga. The solicitor was on his feet, saying he could furnish Mr. Arnold with citations.

The solicitor read: “The law is that evidence that a state’s witness under oath has recanted is not a ground for new trial.”

The solicitor then cited about a dozen cases, remarking that under one of them Mr. Arnold would find the law quoted by the court.

Mr. Arnold: "I do not think that the law is such that under it a man can be caught by perjury and not be able to get out by the truth."

"I am not calling much attention to the evidence which has been read because God alone knows that is the truth. These witnesses seem to be of a type that with some hope of reward in their own minds they will agree to make the statement that the man talking to them would like for them to make; or if they feared punishment as the bars of the station house, even if they were not threatened, they would agree to say that the man talking to them wanted them to say."

ONLY SET THE PACE.

"You could not hunt the penitentiary through and find such a set of witnesses as my friend convicted Frank with. Conley led off with such a nice bunch of lies and go away with them so well, that he encouraged all other liars to try their hand. I didn't believe there was so much depravity in the world."

Judge Hill: "Credibility of witnesses is a matter for the jury."

Mr. Arnold: "Yes, but this is different from other cases."

Mr. Arnold said passion was rampant at the time of the trial.

Judge Hill: "I think you are shut off as to the credibility of witnesses."

Mr. Arnold: "If Frank has a witness to come to him with a plain bold truth, it's a hard proposition to hold him. Take the case of Samuel A. Pardee, who I am informed is a reputable business man. He swore that he saw Frank at 1:03 o'clock on the streets, and this was extremely important since at that hour Conley swore that he and Frank were moving the body. It turns out that Starnes and Campbell have deviled him so repeatedly that he, a reputable

citizen, comes out and says that he probably was mistaken, and asks that his affidavit be withdrawn. If you can shake reputable men that way, what can you do to ignorant Negroes for whom the jail door is yawning? That's what they do to their witnesses. To make them stick to a cover story they lock them up in jail, even for a year, as they have Conley."

PUT WITNESS IN JAIL.

"And so, they put their witnesses in jail. Take Duffy, for instance. They put him in jail, and in a few minutes, he had recanted. Look at the men they have to work with!"

"The thieves and crooks must abound in Atlanta during the court hours. Give me such a bunch of detectives and a station house to put my witnesses in, and Heaven alone knows what can be proved. In this case all they have to do is to send out a call for witnesses to prove anything. They just open the doors and say 'Come all ye! Ye will be received!' And the witnesses answer like soldiers responding to the bugle call. My God! They corral all the criminal elements and they drive them just like we would a herd of sheep. I am beginning to long for a case where I've got some showing with the public."

"Poor old Burke goes around, talking religion, and he gets some of the witnesses to recant their lies and tell the truth. But they quickly go back to their lies when the detectives come around. Speaking of lies, that one of Ragsdale's falls into insignificance when compared with the lies of Dalton, Conley, and others of the state's criminal witnesses. I wish we had a counter ground jury, so we could indict my friend Dorsey's witnesses. We could have a great indicting match. My friend Dorsey is making a great reputation out of this case, and he does not lose sight of the fact for an instant. But it does look like, that with all the perjury on his side he could indict some of them."

EXPLAINS ABOUT RAGSDALE.

Mr. Arnold then went into an explan-

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FRANK LOSES NEW TRIAL FIGHT

(Continued from page 2.)

ation of how the defense happened to bring in the Ragsdale story.

"It looked a little fishy," said he, "but here was this man, a long-time minister of the gospel, a man vouched for by Dr. John E. White and other well known reputable men, and he told his story positively and emphatically. Certainly this minister of the gospel was more worthy of belief than the array of jail birds for which the state vouches. We should have been lax in our duty to our clients, and we would have been cowards as well, if we hadn't put up the Ragsdale affidavit. If Ragsdale has lied—and he seems to have—it is just one more lie to add to the thousand already in the case. And I want to say here that so far as Mr. Rosser and I know it is the cleanest defense ever made in a case. We know that in this case nothing but the truth would stick, and even when we get the truth they come and take it away. But I say that without any hard feeling, for I am not holding ill will against any one, even though a great many, narrow, prejudiced people are bitterly arraigning Mr. Rosser and myself because we have taken the defense of this man and every day, we receive dirty, filthy letters attacking us. We are on the unpopular side, now; but time, that great healer of all things, will bring out the truth, I feel sure. We will leave out the witnesses, and in this case where there is so much perjury, physical facts should control. I will take up three important physical propositions.

WHAT STATE CONTENDED.

"The state contended for conviction upon certain things which it claimed corroborated Conley, notably the blood spots and the hair, which the state claimed to show the crime was committed on the second floor."

Mr. Arnold said Conley first brought the perversion charge into the case at the trial.

"I believe all of this perversion talk is rotten," said he. "I don't believe there has been any perversion in the case on the part of Conley or of Frank. It was just a proposition of common lust."

"I don't see where the cutting of the garments indicated perversion."

Mr. Arnold discussed the blood spots and the hair.

"Conley, in the fitting process, learned that stains of something supposed to be blood had been found in front of the dressing room, so he just said he dropped the body there. So the state contended that strands of hair on the lathe proved Mary Phagan struck her head there and that this so-called blood spot proved Conley's story that he dropped the body in front of the dressing room. Around this spot five or six chips were taken, and on one of the six Dr. Smith testified he found several blood corpuscles. There are 8,000 red corpuscles in a single drop of blood. Almost anything could have accounted for that much blood."

"A mosquito could have been stepped on there. Dr. Smith's testimony practically eliminated the blood spot theory, which left the state to depend upon the hair. The hair was very powerful evidence, yet we did not see it; we never saw it; Mr. Dorsey did not produce it."

PRISONER NOT REPRESENTED.

"Neither did we have any of Mary Phagan's hair with which to compare it. Dr. Harris claims to have made an autopsy, but nobody represented the prisoner at the autopsy. In that matter

we were completely in Mr. Dorsey's hands. Mr. Dorsey had an expert's opinion that it was not Mary Phagan's hair. We all know that the naked eye test, in comparison of hair, is valueless, yet Dorsey had and kept to himself the expert's opinion. He knew the importance of the hair, and with the knowledge of the expert's opinion locked in this breast he used the hair proposition for all it was worth."

"Maybe such extreme partisanship in a civil case, where only property is involved, might be excusable. But I think a solicitor general should be a step above that. I think every material fact in the possession of a solicitor general should be disclosed. Yet when he had the opinion of an expert, he cited to the jury the opinion of the Kennedy girl that the hair was Mary Phagan's. If Mr. Dorsey did not know that an expert's opinion was better than that of a layman who had made only a casual examination, why did he go to the trouble of having Dr. Harris bring in samples of the girl's hair. This is one fact they can't threaten out of the case with jail: that a comparison except by experts is not worth considering, and the experts' testimony breaks up the second proposition on which they claimed the crime was committed on the second floor. And I think that by itself this is enough to cause a new trial in the ordinary case."

DISCUSSES BECKER NOTE.

Mr. Arnold then took up the Becker note proposition, remarking again that the hand that wrote the notes killed the girl. He submitted a photograph of the notes, furnished by the solicitor—not the one used by the defense—to the court, and asked him to examine the number on the order blank.

"That is number 1018," he said. "That is one thing in this case that they can't drive me away from, although I will admit that if these detectives started to dispute the fact that this table is here, I might begin to believe it has disappeared in thin air."

Judge Hill after examining the photograph of the note for a moment, said:

“That looks like 1018 to me.”

“It is altogether probable that Chambers, Gantt and others went through the basement looking for trash and overlooked these cartoon copies of the order blanks,” said Mr. Arnold. “It is not to be assumed that they found all the scraps of paper. There has never been any pretense that the whole basement was ever cleaned up before this tragedy. All they say is that the main trash pile was burned.”

Conley is an habitual note writer. That has been demonstrated. At first he denied he could write, and then when he could deny it no longer he admitted he could write but said all he could write was what somebody else told him.

“Aren’t these notes important enough to justify another investigation? For weeks after the murder everybody said the writer of the notes committed the crime. But that was before the case had been worked up against Frank. It was before they were on Frank’s heels. When they had pushed the case so far they were afraid to change about.”

TRIAL WAS DEPLORABLE.

“I am going to ask you to read these notes written in jail by Conley to Anna Maud Carter. They are unutterably vile.

“The original tragedy was horrible, but it was not more deplorable than the trial.”

“These notes show that Jim Conley is as lustful and bestial a creature as ever lived in the world. They show that his body and mind were saturated and absorbed with lust.”

“Mr. Burns, after reading those jail notes, declared it as his opinion that Conley was a pervert. I gave Mr. Burns full credit for honesty and sincerity. It may be that he doesn’t thoroughly understand the negro nature, and that Conley isn’t a pervert, but I think to call him a pervert is to pay him a compliment.”

“Conley admitted in his affidavit that he knew Anna Maude Carter. I believe she has told the truth about Conley’s relations with her.”

“The fact is not denied that she knew Conley and that she passed notes with him, and the truth of her affidavit is strengthened by the fact that Conley, in his own affidavit, does not deny that he wrote the notes to her.”

Mr. Arnold compared the jail notes with the murder notes, and the murder notes with the evidence given by Conley on the witness stand. He pointed out numerous similarities in the use of words and in phrasing. He declared that instead of there having been two murder notes, there was one murder note which was written on two pieces of paper.

PUTS BLAME ON CONLEY.

“They say,” declared Mr. Arnold, “that the murder note was Frank’s conception and Conley’s execution. I contend in the light of these jail notes and the similarity of words and phrases used by Conley on the witness stand with words and phrases in the murder note that it was Conley’s conception and Conley’s execution.”

“I am limiting my argument to three physical facts—the carbon copy of the order blanks, which was never in Frank’s office or the second floor: the hair which Dr. Harris declared not to have been Mary Phagan’s hair, and the subsequent notes written in jail by Conley. I am doing this because I think they come squarely and genuinely with n the law for an extraordinary motion.”

At this point Mr. Arnold stopped his argument to inquire if Judge Hill would permit the defense to submit a brief on certain points of law raised by the solicitor.”

Judge Hill replied: “Mr. Arnold, think you will probably be too late. I may decide this case at the close of the argument.”

Mr. Arnold resumed his comparison of the jail notes with those found by Mary Phagan’s body in the factory basement. He

declared Conley's impulse was to write notes: that it would never have occurred to anybody else to write those jail notes.

"In conclusion," said he, "we have presented this case to your honor under great difficulties. All of the facts brought out by us have been subjected to the closest scrutiny, and if any of them stands muster they should receive due consideration. We had to go into their camp to get Harris on the hair."

"Without the testimony of Ragsdale, Epps and the others, shouldn't these three physical facts, the hair, the carbon copy of the order blank and the subsequent notes written in jail by Conley, entitle Leo M. Frank to a new trial? Wouldn't these facts justify a jury in sweeping aside Conley's evidence?"

ALEXANDER IS HEARD.

As Mr. Arnold concluded and sat down Attorney Harry A. Alexander arose and addressed the court.

"Your honor," he said, "I think that Mr. Tye is under the impression that before deciding this extraordinary motion you will give him an opportunity to present reasons why your decision should not be rendered until after you have heard the argument on our motion to set aside the verdict."

"No, I have not given Mr. Tye to understand that," replied Judge Hill. "I told him distinctly I would not delay this case. Mr. Dorsey you will take an order overruling the extraordinary motion."

Immediately Mr. Rosser and Mr. Arnold were on their feet to inquire if the court would certify to a bill of exceptions to the supreme court. Judge Hill said he would, but later announced that in the event the case was carried up he would send along a written opinion with it.

Before adjourning the hearing Judge Hill announced that on Saturday morning at 10 o'clock he would begin the hearing on the motion filed by Attorneys Tye, Peebles and others asking that the original verdict in the Frank case be set aside because the

defendant had been denied his constitutional right to be present when the jury returned its verdict against him.

Solicitor Dorsey said he had been so busy with the extraordinary motion that he had not had time to prepare himself to combat the “set aside” motion and he feared he might not be ready Saturday.

“We will consider that at that time,” said Judge Hill.

Dorsey Promises Thorough Probe by Grand Jury

Distinctly the sensation of Tuesday’s hearing was the placing of Dan S. Lehon, the Burns lieutenant, under a \$1,000 bond to appear as a witness before the grand jury.

The solicitor has announced that the grand jury will be given the data for a thorough probe of the many charges of perjury and bribery which have been made in the case. The solicitor, however, has consistently refused to name the men against whom he will ask the grand jury to bring indictments.

In the prosecutions, which are to follow the hearing, the solicitor says he will reach just as high as the evidence permits.

When Lehon was placed under bond the solicitor stated he would probably be needed before the grand jury within a week or ten days and it is presumed general prosecutions will start within that time.

GILLELAND MAKES STATEMENT.

Deputy Sheriff J. W. Gilleland, the jailer referred to in the affidavit made by the Carter woman for the police, denies most emphatically that he ever allowed the woman to enter Conley's cell.

The only person allowed to enter the negro's cell, the deputy explains, were the negro men who cleared it up and the man who brought Conley his meals. He does not know of the passing of any notes between Conley and the negro woman, he says. He brands practically the entire story of the negress as a "lie."

She at one time requested him to allow her to enter the cell, but did not again bring up the matter, when he flatly refused the request, he says.

Bernard Denies Charge Of Luring Epps Away

Branding as false and a "lie out of the whole cloth" the charge that he had any connection whatever in enticing young George Epps with C. W. Burke and Jimmie Wrenn to Birmingham, Ala., and others securing an affidavit to be used in connection with the extraordinary motion for a new trial for Leo M. Frank, B. Bernard has written a card to *The Journal* with the request that it be published.

The communication follows:

Relative to the charge which I see published that I, with C. W. Burke and Jimmie Wrenn, enticed young George Epps to Birmingham, Ala., and intimidated him into changing his evidence given on the Frank case, I wish to say it is a lie out of the whole cloth. I do not know C. W. Burke or Jimmie Wrenn, and never saw the Epps boy until a day or two ago upon his return to Atlanta.

Immediately upon hearing the charge that I was supposed to be connected with it, I went to Solicitor Dorsey's office, told the boy and the solicitor that the boy was lying, and requested the solicitor to at least make a decent investigation of the boy's statements, before using my name. I haven't been in Birmingham in eight years. It would have been an easy matter to have investigated and found out that the charge so far as I am concerned was not true. It does seem that with the large force of detectives at work that a citizen should at least have the protection of some show of investigation and not parade him in public prints upon the word of an irresponsible criminal child, that has to be nursed as to his testimony, as occasion demands.

If there is no more truth to the other charges of bribery, intimidation, and improper methods than there is in this charge against me, then the public only has to wait a few minutes to find that they are but an empty pretense and sham.

I requested an investigation by the solicitor's force. This it seems has been denied me. I will now demand one, where the law gives me the right to have one, in the criminal courts, and while prosecuting is good, I will take a warrant for the little Epps man, and give him an opportunity to make good, or go where they punish juveniles who try to obtain indemnity for their own sins by lying on others.

B. BERNARD.

Rabbi Asserts Witness

Gave False Testimony

The Journal has been requested to publish the following communication from Rabbi David Marx, which is self-explanatory:

To the Editor of The Journal:

Dear Sir: I crave the courtesy of saying through your publication a few words about the affidavit made by Mary Rich that Mrs. Frank, Messrs. Burke and Lehon and I attempted to persuade her to give false testimony in the Frank case. This is a deliberate falsehood. At the request of Mrs. Frank, I accompanied her to the place where Mary Rich has her stand. The purpose of this call was not to intimidate or coerce the woman nor to persuade her to any thing that was not right or proper. It was to ascertain if the story which had been widely circulated that she had sold Jim Conley a lunch near the National Pencil factory's alley on the afternoon of Memorial Day last year was true and if true whether she would make affidavit to this fact. This woman was urged to tell only the truth, the whole truth and nothing but the truth.

She declared that Jim Conley had bought a 20 cent lunch a little before 2:30 o'clock on the afternoon of that day and at the place where she has her stand, which is near said alley. She said that she knew the time because a gentleman going towards the Terminal station with a grip in his hand had told her the time and that Conley had just left her stand. She further stated that she would sign nothing because the publicity which had been given her had injured her business and she had sworn not to sign anything but that she would tell the truth in court. At no time was she asked or was it suggested to her by any one in the party to do anything except tell the truth.

She refused to make the affidavit asked for but insisted that it was the truth and because it was true she said it then and would always say it. Mrs. Frank told her that her affidavit might be of service but she said, "I have sworn not to sign anything, but if called into court I will say just what I have said to you."

I understand that she certified to this very thing she told us, before the commissioner appointed by the court to take her deposition. I make this statement in justice to all parties concerned and to the public in general. Respectfully yours,

DAVID MARX.

Is No Relation to R. L. Barber in Frank Case

The editor of *The Journal* is in receipt of the following card with the request that it be published.

To my friends and the public—

I have been caused very much embarrassment on account of an affidavit given by one R. L. barber, in connection with the "Frank case." This man is in no way connected or related to me.

Very truly,

W. A. BARBER.

63 W. Mitchell Street.
